

# COUNTRY STUDIES CONCERNING STATE AID



**Estonia**  
**Justice and Environment 2024**

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## Background

In March 2021, the Aarhus Convention Compliance Committee (ACCC) found in favor of J&E member organization ÖKOBÜRO and its member, GLOBAL 2000, in the communication they had brought, namely [ACCC/C/2015/128 \(EU\)](#). Specifically, the Committee [found that](#):

- (a) *By failing to provide access to administrative or judicial procedures for members of the public to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, the Party concerned fails to comply with article 9 (3) of the Convention;*
- (b) *By failing to provide any procedure under article 9 (3) of the Convention through which members of the public are able to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, the Party concerned also fails to provide an adequate and effective remedy regarding such decisions as required by article 9 (4) of the Convention.*

Accordingly, the Committee made the following recommendation:

*The Committee, pursuant to paragraph 35 of the annex to decision I/7, recommends that the Meeting of the Parties, pursuant to paragraph 37 (b) of that annex, recommends that the Party concerned take the necessary legislative, regulatory and other measures to ensure that the Aarhus Regulation is amended, or new European Union legislation is adopted, to clearly provide members of the public with access to administrative or judicial procedures to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, in accordance with article 9 (3) and (4) of the Convention.*

## Questions

### **IS ADMINISTRATIVE STATE AID CASE LAW AVAILABLE IN YOUR COUNTRY?**

There is no database of administrative state aid case law in Estonia.

### **IS JUDICIAL STATE AID CASE LAW AVAILABLE IN YOUR COUNTRY?**

There is no database of judicial state aid case law in Estonia. In November 2022, the Ministry of Finance published a collection of state aid case law summaries on their website (available [here](#) in Estonian). This includes cases from the case law of the ECJ, the General Court and the Supreme Court of Estonia. However, this has not been updated and there seems to be no more recent collection published.

### **IN JUDICIAL CASES, WHO HAD LEGAL STANDING ACCORDING TO THE STATE AID CASE LAW?**

To have legal standing, the party must demonstrate how the state aid decision infringes their subjective rights. The businesses who were given or refused state aid had standing as well as their competitors have had standing in cases where they have been able to clearly demonstrate how the disputed decision affects their subjective rights.

### **IS THERE ANY EXAMPLE WHERE AN NGO WANTED TO HAVE LEGAL STANDING IN STATE AID RELATED COURT PROCEDURE?**

In 2005, there was one case in which the Estonian Fund for Nature contested a decision by the state-operated Environmental Investment Centre to finance the training of forwarder and harvester operators. This case could be considered a borderline state aid case; however, the claimant did not have standing in that case. There are no other cases that would clearly centre around state aid and in which an NGO wanted to have legal standing.

It would be quite difficult for an eNGO to have standing in a state aid related court procedure, because to have standing, the NGO must demonstrate that the state aid decision either 1) infringes their subjective rights or 2) the decision hinders the eNGO from achieving its environmental protection goals as stipulated in its statutes. Fulfilling the first criterion is difficult, because a decision to grant state aid could distort competition or have other similar consequences, but these can hardly be said to infringe the subjective rights of an eNGO. The second criterion is also very difficult to fulfil, because state aid decisions rarely have direct consequences for the environment. If state aid was given to carry out an environmentally harmful activity, the decision to grant state aid itself does not usually allow the activity to be

carried out and therefore does not directly damage the environment. For the harmful activity to be carried out, one needs a construction permit, an integrated permit or similar, which could then be contested by an eNGO on the grounds of environmental harm.

### **ARE THERE ENVIRONMENTAL ISSUES ADDRESSED IN STATE AID CASES IN YOUR COUNTRY?**

No, environmental issues are not directly addressed in Estonian judicial state aid case law. There are cases that concern the production of renewable energy or farming, but the focus of these cases is not on the environmental impact of the supported activity or something similar; their connection to environmental issues is of little importance in the cases.

### **IF YES, WHAT ARE THEY?**

### **HAS THERE BEEN A PRELIMINARY RULING CASE INITIATED BY YOUR COUNTRY'S JUDICIARY IN STATE AID CASES?**

Yes, there have been three such cases (see next question).

### **IF YES, WHAT WAS THE JUDGMENT OF THE EU COURT?**

In 2022, the Tallinn Administrative Court posed questions regarding the Commission communication „Guidelines on State aid for environmental protection and energy 2014-2020”, more precisely regarding the definition of ‘start of works’. In 2023, the EU Court delivered its [ruling](#) (C-11/22).

In 2020, the Tallinn Administrative Court initiated a preliminary ruling regarding the obligation imposed on bus companies to transport certain categories of passengers free of charge. The question was about the conditions with which a compensation for such obligation must comply to be in accordance with state aid regulation. In 2022, the EU Court delivered its [ruling](#) in the case no. C-614/20.

In 2020, the Supreme Court posed questions regarding the Commission communication „Guidelines on State aid for environmental protection and energy 2014-2020”, more specifically on the timing of the activity for which state aid is sought and the implementation of the aid plan. In 2022, the EU Court delivered its [ruling](#) (C-470/20).

The questions about the bus companies did not affect any environmental issues. The questions in the two other cases were related to the environment, namely renewable energy production. However, the focus of the questions was not on the environmental aspects of the activity, but rather the technicalities of the activities, such as when does the activity have to begin to be

eligible for aid, how does the approval of the aid plan affect giving out state aid etc. Therefore, there was no case in which the questions were directly linked to environmental issues

### **HAS THERE BEEN AN INFRINGEMENT CASE AGAINST YOUR COUNTRY AT THE COMMISSION?**

In 2023, the Commission opened five infringement cases against Estonia, two of which are linked to environmental issues.

In case no. INFR(2022)2134, the Commission called upon Estonia to fully adopt directives no. 2004/107/EC on toxic pollutants in air and 2008/50/EC on ambient air quality. The Commission argues that Estonia has not properly transposed the requirements of the directives, including these related to sampling points, quality assurance and quality control systems and documentation of the site selection. This was covered by the [Estonian National Public Broadcasting](#).

In case no. INFR(2022)2002, the Commission called upon Estonia to comply with the habitat directive (92/43/EEC), namely, to set specific and measurable protection targets for the special areas of conservation and apply sufficient protective measures. The Commission also called upon Estonia to properly carry out impact assessments regarding activities that could affect Natura areas, especially logging. This case has been rather widely published in the media (some examples here by [Delfi Maaleht](#) and the [Estonian National Public Broadcasting](#)).

In November 2023, the Commission followed this by sending a reasoned opinion, because Estonia continued to violate the habitats' directive. Estonia was due to respond to it by mid-January 2024.

### **DID IT GO TO THE EU COURT?**

To our knowledge, these infringement procedures have not (yet) been taken to the EU Court. However, as they were opened fairly recently and not long has passed since the reasoned opinion, these cases could still be taken to the EU court.

### **IF YES, WHAT WAS THE JUDGMENT OF THE EU COURT?**

### **HAS IS CHANGED ANYTHING IN YOUR RESPECTIVE CASE LAW?**

The habitats' directive infringement case has brought a change in Estonian law. As of July 2024, an amendment to the Nature Protection Act and Forest Act is under way, to assess the impacts of all activities, including forest felling, that could affect Natura 2000 areas. To limit the increase in bureaucracy, there is a plan to allow for stand-alone appropriate assessment–right

now, it can only be carried out as part of an EIA/SEA. However, the amendment has been delayed and it is unclear when it is going to enter force.

In a longer term, the Ministry of Climate plans to assess the impacts of felling forest in SEA to solve multiple questions at once and not order the impact assessment of each individual felling separately. The details of this plan remain unclear.

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